

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13031 of 2007

Dated:25.06.2007

Between:

K.Nagalingam, S/o.Venkata Subba Rao.

...Petitioner

and

The Government of Andhra Pradesh,
Rep.by its Prl.Secretary-Revenue,
Secretariat, Saifabad, Hyderabad, and others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

This Writ Petition is filed challenging the notice in Form-II, dated 12.04.2007, issued under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 2007. In the said notice it is alleged that the petitioner obtained the assigned land admeasuring about Acs.9.15 cents in Survey Nos.176/3, 176/5, 177/2 and 177/3 in contravention of the provisions of Section 3(2) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'). After receiving the notice, the petitioner already submitted explanation on 16.04.2007, and no orders are passed. Alleging that the authorities are taking steps to evict the petitioner without passing orders, the petitioner filed the instant Writ Petition challenging the notice in Form-II.

The case of the petitioner is that he purchased an extent of Acs.4.69 cents in Survey No.176/3 situated at Nayunipalli Village of Vetapalem Mandal in Prakasam District, from Sri K.Venkata Veera Naga Prasad under registered sale deed in November 2006. The land was owned by Marrakula Raghavulu, whose title dates back to 1933. Grandson of Marrakula Raghavulu sold the land in 1990 to Satram Bhavani Shankar and his brothers, who in turn sold the land in 1992 to P.Laxman Rao. M/s.G.Surendra and Rajendra purchased the property in 1995, who in turn sold the property to the petitioner's vendor in 2005.

The petitioner, therefore, contends that from 1933 onwards till 2005-2006, the land is a private land, and that after purchase in 2006, the petitioner divided the land into residential plots after obtaining layout from the Nayunipalli Gram Panchayat. The petitioner also sold fifty plots out of seventy six between February to March 2007 to various persons under agreements of sale. Sale deeds are also submitted to the fifth respondent, Sub-Registrar, Chirala, for registration of the documents. As the land is private land, issue of notice in Form-II by the fourth respondent is without jurisdiction. It is not assigned land.

Learned Senior Counsel appearing for the petitioner, Sri S.Rama Chandra Rao, submits that the Mandal Revenue Officer, Vetapalem, fourth respondent herein, issued a certificate on 07.07.1999 to the effect that the land in Survey No.176/3 is not Government land, that it is not ceiling surplus land and that it is not assigned land. Therefore, the issue of the impugned notice is without jurisdiction. He also submits that the revenue authorities issued pattadar pass books to the owners of the land, who had purchased it at different points of time, and therefore, the issue of notice is unsustainable. According to the learned Senior Counsel, when action is initiated by the authority, who is not competent to take action under the provisions of the Act, this Court can interfere even at the stage of notice.

Learned Assistant Government Pleader for Revenue (Assignment) opposed the Writ Petition. He submits that against show cause notice in respect of which explanation is submitted, a Writ Petition would not lie.

The settled position of law that against a show cause notice, a Writ Petition would not lie, and even if the jurisdiction of the authority is questioned, such objection should be raised before the authority, is not disputed by the learned Senior Counsel. That being the legal position, and the questions, whether the land is assigned land, whether the Tahasildar acted *bona fide*, and whether Tahasildar verified all the documents relating to the history of the land, are the matters, which have to be adjudicated before the Tahasildar. The petitioner is given liberty to produce all the documents before the Tahasildar including the certificate dated 07.07.1999 issued by the Mandal Revenue Officer, Vetapalem. This Court is not inclined to express any opinion on the merits of the case. As and when the petitioner produces the documents, the Tahasildar shall consider the same before passing any order against the petitioner. It is needless to say that unless and until an order is passed by the Tahasildar after considering the explanation submitted by the petitioner, the petitioner cannot be dispossessed.

The Writ Petition, with the above observations, is accordingly dismissed. No costs.

(V.V.S.RAO, J)

25.06.2007
vs